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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,572	01/24/2002	Stuart H. Thomson	1095-1066.3	5439

7590 04/07/2003

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EXAMINER
GORDON, STEPHEN T

ART UNIT	PAPER NUMBER
3612	

DATE MAILED: 04/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

BEST AVAILABLE COPY

Office Action Summary	Application	Applicant(s)
	10/056,572	Thamio- et al
	Examiner	Art Unit / Confirmation No.
	Gordo-	3612

- The MAILING DATE of this communication app ars on the cover she t beneath the correspondenc address -

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- [x] Responsive to communication(s) filed on 1-24-02
- [ ] This action is **FINAL**. [x] This action is non-final.
- [ ] Since this application is in condition for allowance except for the formal matters, **prosecution as to the merits is clos d** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- [x] Claim(s) 1-22 is/are pending in this application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- [ ] Claim(s) _____ is/are allowed.
- [ ] Claim(s) _____ is/are rejected.
- [ ] Claim(s) _____ is/are objected to.
- [x] Claim(s) 1-22 are subject to restriction or election requirement.

Application Papers

- [ ] The proposed drawing correction, filed on _____ is [ ] approved or [ ] disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.
- [ ] The drawing(s) filed on _____ is/are [ ] accepted or [ ] objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- [ ] The specification is objected to by the Examiner.
- [ ] The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- [ ] Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d) or (f).
  - [ ] All [ ] Some* [ ] None of the:
    - [ ] Certified copies of the priority documents have been received.
    - [ ] Certified copies of the priority documents have been received in Application No. _____.
    - [ ] Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

  *Certified copies not received: _____
- [ ] Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - [ ] The translation of the foreign language provisional application has been received.
- [ ] Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- [ ] Information Disclosure Statement(s), PTO-1449, Paper No(s) ____
- [ ] Interview Summary, PTO-413
- [ ] Notice of References Cited, PTO-892
- [ ] Notice of Informal Patent Application, PTO-152
- [ ] Notice of Draftsperson's Patent Drawing Review, PTO-948
- [ ] Other _____

DETAILED ACTION

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

   I. Claims 1-13, 19, and 21-22, drawn to a protection system for autorack railcars, classified in class 410, subclass 87.

   II. Claims 14-18 and 20, drawn to a method of preparing a transport for receiving a load, classified in class 414, subclass 812.

2. The inventions are distinct, each from the other because of the following reasons: Inventions II and I (claims 1+, 2+, 21, and 22) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method as claimed can be practiced by another and materially different apparatus such as one not requiring at least fasteners per se (i.e. gluing of the pieces).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. This application contains claims directed to the following patentably distinct species of the claimed invention: cushion species of figure 2 vs figure 4 vs figure 10 vs figure 11 vs figure 17 vs figure 20.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims appear to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Additionally, election between the railcar configuration species of figure 8 vs figure 9 and the fastener subspecies of figure 6 vs figure 15 is required using the above detailed procedure. Again applicant is reminded that for the response to be considered complete, a listing of the claims deemed readable on the elected species is required.

7. Due to the complexity of the above restriction/election, the requirement is being submitted in writing to allow applicant ample time to address the issues raised. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556.

stg

April 3, 2003

4/7/03

STEPHEN T. GORDON
PRIMARY EXAMINER